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Joseph Taplitzky*

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ORA NAFTALI AND RONI NAFTALI, AS
TRUSTEES OF THE EDTOM TRUST
DATES APRIL 10, 2011,

Plaintiffs,

v.

NEW YORK DEFERRED EXCHANGE
CORP., FRITZ TRINKLEIN and JEFFREY
L. WECHSLER,

Defendants.

NEW YORK DEFERRED EXCHANGE
CORP.,

Third Party Plaintiff,

v.

ORA NAFTALI and RONI NAFTALI,

Third Party Defendants.

ORA NAFTALI and RONI NAFTALI.,

Third Party Counterclaim
Plaintiff

v.

NEW YORK DEFERRED EXCHANGE
CORP.,

Third Party Counterclaim
Defendants.

Civil Action No. 15-CV-07152 (JMA)(ARL)

**SECOND THIRD-PARTY DEFENDANT
JOSEPH TAPLITZKY'S ANSWER AND
SEPARATE DEFENSES TO SECOND
THIRD-PARTY PLAINTIFF'S COMPLAINT**

Document Filed Electronically

ORA NAFTALI and RONI NAFTALI.,

Third Party Counterclaim
Plaintiffs

v.

NEW YORK DEFERRED EXCHANGE
CORP.,

Third Party Counterclaim
Defendants.

ORA NAFTALI and RONI NAFTALI.,

Third Party Cross-Claim
Plaintiffs

v.

JEFFREY L. WECHSLER.,

Third Party Cross-Claim
Defendant.

JEFFREY L. WECHSLER.,

Second Third Party
Plaintiff

v.

JOSEPH TAPLITZKY.,

Second Third Party
Defendant

Second Third-Party Defendant Joseph Taplitzky ("Taplitzky") by and through undersigned counsel of record, hereby submits the following answers to the Second Third-Party Complaint filed by Second Third-Party Plaintiff Jeffrey L. Wechsler ("JLW"):

PARTIES, JURISDICTION AND VENUE

1. Taplitzky neither admits nor denies the allegations contained in Paragraph 1 of the Second Third-Party Complaint filed by Second Third-Party Plaintiff JLW as they call for a legal conclusion.

2. Admitted.

3. Taplitzky neither admits nor denies the allegations contained in Paragraph 3 of the Second Third-Party Complaint as they call for a legal conclusion.

4. Taplitzky neither admits nor denies the allegations contained in Paragraph 4 of the Second Third-Party Complaint as they call for a legal conclusion.

ALLEGATIONS COMMON TO ALL COUNTS

5. Taplitzky neither admits nor denies the allegations contained in Paragraph 5 of the Second Third-Party Complaint as they seek to describe or characterize the Second Amended Complaint filed by plaintiffs Ora Naftali and Roni Naftali as Trustees of the Edtom Trust, Dated April 10, 2011 (“Plaintiffs”) which is a document that speaks for itself.

6. Taplitzky neither admits nor denies the allegations contained in Paragraph 6 of the Second Third-Party Complaint as they seek to describe or characterize the Plaintiffs’ Second Amended Complaint which is a document that speaks for itself. To the extent that the allegations contained in Paragraph 6 of the Second Third-Party Complaint are directed toward Taplitzky, they are denied.

7. Taplitzky neither admits nor denies the allegations contained in Paragraph 7 of the Second Third-Party Complaint as they seek to describe or characterize the Answer to the Plaintiffs’ Amended Complaint that was filed by JLW, which is a document that speaks for itself.

8. Denied.

**SECOND CAUSE OF ACTION AGAINST
SECOND THIRD-PARTY DEFENDANT TAPLITZKY**

9. Taplitzky repeats and realleges his responses to the preceding paragraphs as if set forth at length herein.

10. Denied.

11. Taplitzky lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Second Third-Party Complaint and therefore denies the same.

12. Denied.

13. Denied.

14. Denied.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The Second Third-Party Complaint fails to state a cause of action against Taplitzky upon which relief may be granted, and Taplitzky reserves the right to move at or before trial to dismiss same.

SECOND SEPARATE DEFENSE

Taplitzky did not make any knowingly false statements, misrepresentations, and did not otherwise conceal material information from Plaintiffs and/or JLW.

THIRD SEPARATE DEFENSE

Second Third-Party Plaintiff did not reasonably rely upon any alleged statement or alleged representation made by Taplitzky.

FOURTH SEPARATE DEFENSE

Second Third-Party Plaintiff's claims are barred because the alleged misrepresentations or omissions were not material to the transaction.

FIFTH SEPARATE DEFENSE

Taplitzky's conduct was not negligent, careless or reckless in any regard; and therefore, it is not liable to Second Third-Party Plaintiff or the Plaintiffs.

SIXTH SEPARATE DEFENSE

Taplitzky asserts that, at all relevant times, he operated in a reasonably prudent and professional manner consistent with accepted standards of practice within the real estate industry.

SEVENTH SEPARATE DEFENSE

Second Third-Party Plaintiff's liability, if any, were caused by his own acts and/or omissions and/or the acts and omissions of third parties whom Taplitzky did not control nor had a duty to control.

EIGHTH SEPARATE DEFENSE

Second Third-Party Plaintiff's claims are vexatious, frivolous, without merit and are intended to harass and embarrass Taplitzky and to cause needless litigation. As such, the Taplitzky reserves the right to seek an award of counsel fees and costs due to the frivolous nature of this action pursuant to Rule 11.

NINTH SEPARATE DEFENSE

The Second Third-Party Plaintiff's claims against Taplitzky are barred by the equitable doctrines of estoppel, laches, waiver and/or unclear hands.

TENTH SEPARATE DEFENSE

While denying all of the allegations of the Second Third-Party Plaintiff's Complaint regarding liability and damages allegedly sustained by the Second Third-Party Plaintiff, to the extent that the Second Third-Party Plaintiff may be able to prove any such damages, he is not entitled to an award of costs of suit.

ELEVENTH SEPARATE DEFENSE

At all times, Taplitzky's actions were reasonable, justifiable, in good faith, and without malice.

TWELFTH SEPARATE DEFENSE

No justiciable case or controversy exists with regard to claims asserted against Taplitzky.

THIRTEENTH SEPARATE DEFENSE

Second Third-Party Plaintiff is not entitled to any compensatory damages.

FOURTEENTH SEPARATE DEFENSE

The Second Third-Party Plaintiff's claims against Taplitzky are barred, in whole or in part, by the relevant statute of limitations. Taplitzky reserves the right to move to have the Second Third-Party Complaint dismissed on this basis in compliance with the Federal Rules of Civil Procedure.

FIFTEENTH SEPARATE DEFENSE

The inadvertent or unintentional failure to assert any defense not asserted herein shall not be deemed as a waiver in whole or in part of that defense, and Taplitzky reserves the right to assert additional defenses as may be ascertained through discovery.

WHEREFORE, Taplitzky demands judgment dismissing the Second Third-Party Complaint in its entirety, together with attorneys' fees, costs and such further and other relief the Court deems just and proper.

DESIGNATION OF TRIAL COUNSEL

Taplitzky hereby designates Marc C. Singer as trial counsel in this matter.

SAIBER LLC
Attorneys for Second Third-Party Defendant
Joseph Taplitzky

By: /s/ Marc C. Singer
MARC C. SINGER

Dated: December 21, 2018

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on December 21, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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By: /s/ Marc C. Singer
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Dated: December 21, 2018